RECOVERY OF REASONABLE VALUE OF GRATUITOUS MEDICAL CARE REJECTED

Coyne v. Campbell

11 N.Y.2d 372, 183 N.E.2d 891, 230 N.Y.S.2d 1 (1962)

The plaintiff, a practicing physician, was injured when his car was struck from behind as a result of the defendant's negligence. The physicians who treated the plaintiff's injuries, following the long-standing custom of doctors, did not charge for the medical treatment, physiotherapy and other care rendered to the plaintiff. In addition, the plaintiff received certain treatments from his nurse during usual office hours. The plaintiff sought to recover special damages of $2235 as the reasonable value of the medical and nursing care received. The trial court refused to admit evidence as to the value of this care. The plaintiff appealed to the Appellate Division of the Supreme Court from a judgment in his favor which excluded these special damages. That court affirmed the decision of the trial court,[1] as did the Court of Appeals.[2]

The question presented by this case is whether a plaintiff-physician may recover the reasonable value of medical treatment rendered to him by other physicians without charge as a professional courtesy. The plaintiff sought to invoke the collateral source doctrine as it is applied in a majority of the states,[3] which does not allow the defendant to take advantage of any benefit conferred on the plaintiff by third parties as a result of the injury. Rejecting this theory, the court looked for some consideration between the plaintiff and the third party to determine whether the benefit received should be passed on to the defendant.

Apparently, the New York court originated the collateral source doctrine in the case of *Althorf v. Wolfe*,[4] where the defendant, in a wrongful death action, was not allowed the benefit of life insurance of the person for whose death he was responsible. Gradually, the doctrine developed in the courts of New York and other states so that it now has a wide scope, ranging from payments made pursuant to a contract, with full consideration, to gratuitous benefits. The items included under the collateral source doctrine can be divided into four categories:

1. Salary and wages received by the injured party during his disability.
2. Pensions received as a result of the injury.
3. Life, accident and hospitalization insurance proceeds.
4. Hospital and medical care furnished gratuitously.[5]

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[1] Coyne v. Campbell, 15 App. Div. 870, 225 N.Y.S.2d 258 (1962).

[2] Coyne v. Campbell, 11 N.Y.2d 372, 183 N.E.2d 891, 230 N.Y.S.2d 1 (1962).

[3] See Averbach, "The Collateral Source Rule," 21 Ohio St. L.J. 231 (1960); O'Connor, "Collateral Source Rule," Trial & Tort Trends (1957) and cases there cited by jurisdiction. See also Annot., 18 A.L.R. 678 (1922); 95 A.L.R. 575 (1935); 128 A.L.R. 686 (1940); 13 A.L.R.2d 355 (1950); 18 A.L.R.2d 659 (1951); 19 A.L.R.2d 557 (1951); 52 A.L.R.2d 1451 (1957); 68 A.L.R.2d 876 (1959); 75 A.L.R.2d 885 (1961).

[4] 22 N.Y. 355 (1860).

[5] O'Connor, *supra* note 3, at 644.

The last of these continues to be a source of disagreement.

In the present case the court based its decision on the fact that the plaintiff was entitled to recover only his pecuniary losses,[6] which is in keeping with the theory that damages in tort, especially in the case of negligence, should be compensatory only.[7] Since the plaintiff had paid nothing for medical services, the court felt that it would be unfair and punitive to require the defendant to pay the plaintiff for services rendered gratuitously.[8] Similar reasoning was the basis of decision in the case of *Rigby v. Aetna Casualty & Surety Co.*,[9] which also refused recovery to a physician for medical services rendered gratuitously.

A similar matter was decided with a different result in Ohio in the case of *Ohliger v. Toledo*,[10] which allowed the plaintiff-physician to recover the reasonable value of medical services rendered gratuitously to him when he was injured as a result of the defendant's negligence. The court based its decision on the cases of *Klein v. Thompson*,[11] where, in a case of assault and battery, the plaintiff was allowed to recover the amount of a surgeon's bill which, before trial, was paid by the township trustees, and *Indianapolis v. Gaston*,[12] which allowed a plaintiff-physician to recover for medical care, even though furnished gratuitously and made necessary by the defendant's negligence. In *Klein* the court's reason for denying the benefit to the defendant was that there was no intention on the part of the third party to benefit the defendant,[13] while in *Gaston* the court gave no reason for its holding.[14]

In many of the cases which apply the collateral source doctrine, the only reason which the court gives for denying the advantage of the benefit to the defendant is that the third party did not intend to benefit the wrongdoer.[15] A different and equally unconvincing reason for allowing a plaintiff to recover even though he has received compensation from a collateral source is given in *Hudson v. Lazarus*,[16] where the court pointed out that the award received by a plaintiff may not be adequate to compensate him for his injury and, in addition, he must pay substantial attorney's fees from the award.[17] These cases depart from the compensatory theory of damages in tort in favor of a punitive theory which stresses that the defendant should

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[6] Coyne v. Campbell, *supra* note 2, at 373-374, 183 N.E.2d at 891, 230 N.Y.S.2d at 2.

[7] 15 Am. Jur. *Damages* § 12 (1938); 25 C.J.S. *Damages* § 17 (1941); McCormick, Damages § 137 (1935); Sherman Gas & Elec. Co. v. Beldin, 103 Texas 59, 123 S.W. 119 (1909).

[8] Coyne v. Campbell, *supra* note 2, at 376, 183 N.E.2d at 893, 230 N.Y.S.2d at 4.

[9] 151 So. 119, 122 (La. Ct. App. 1933).

[10] 20 Ohio C.C.R. 142, 10 Ohio C.C. Dec. 762 (1900).

[11] 19 Ohio St. 569 (1869).

[12] 58 Ind. 224 (1869).

[13] Klein v. Thompson, *supra* note 11, at 571.

[14] Indianapolis v. Gaston, *supra* note 12, at 227.

[15] See Annot., 128 A.L.R. 686, 687 (1940); Hale, Damages § 44 (2d ed. by Cooley 1912); 1 Sedgwick, Damages § 67 (9th ed. 1920).

[16] 217 F.2d 344 (D.C. Cir. 1954), *cert. denied*, 350 U.S. 856 (1954).

[17] *Id.* at 346.

be made to pay for the harm done, even though the plaintiff pays nothing to be put in the same position he occupied before the accident.[18]

In the instant case, the plaintiff had in no way given consideration for the benefit he received.[19] Although it was argued that the plaintiff was under a moral obligation to render care to those who had cared for him without charge, the court rejected the argument saying, "A moral obligation, without more, will not support a claim for legal damages."[20] This seems to be especially true in this case when one stops to consider that the plaintiff, because he was a doctor, was under a moral obligation even *before* the accident to render care gratuitously to fellow physicians in need of his help. It does not appear that the plaintiff increased this obligation materially by accepting free treatment when he was in need.

Since the plaintiff was in the same position in regard to medical expenses after the accident as before, it can be argued that he suffered no loss. The award which he recovered was all the compensation to which he was legally entitled for the loss sustained. If the present method of determining damages is unsatisfactory in that it does not fully compensate the plaintiff, then it would seem that the preferable way of remedying the situation would be to allow larger recoveries. Then all plaintiffs would be adequately compensated, not just the ones which receive funds from collateral sources. The same applies to attorney's fees. In most cases, these fees are not considered to be recoverable from the defendant. If attorney's fees are to be recovered, the plaintiff should be required to state them as an item of his damages and prove them, and the defendant should have an opportunity to present evidence against them. If the plaintiff is not recovering adequate compensation, the deficiency should be corrected in the proper way; the remedy should not be disguised.

Furthermore, it is as unlikely that the doctors who donated their services intended that the plaintiff should be the recipient of a $2235 windfall, as it is that they did not intend to benefit the wrongdoer.[21] It would seem that the

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[18] See Note, 63 Harv. L. Rev. 330, 331 (1940).

[19] This case may be criticized in one respect. As the dissent points out in footnote 1 of the dissenting opinion, 11 N.Y.2d at 377, 183 N.E.2d at 894, 230 N.Y.S.2d at 5, the care received from the nurse was not gratuitous, in that the care was rendered to the plaintiff during the usual office hours when the nurse was being paid and would otherwise have been caring for other patients.

[20] Coyne v. Campbell, *supra* note 2, at 375, 183 N.E.2d at 892, 230 N.Y.S.2d at 3.

[21] As a result of this decision, it is possible that the physicians of New York will charge for services rendered to fellow physicians when there is a possibility that a third party will be liable for the damage. This would seem to meet the requirement that the plaintiff pay or at least be liable for the services rendered in order to recover from the defendant. The physicians rendering treatment would then be free to do with the proceeds as they please. They may decide to keep them if the plaintiff recovers from the third party for the services, with the idea in mind that the defendant, rather the plaintiff, paid for the care. On the other hand, they may wish to assist the plaintiff by returning the fee as a gift regardless of whether the plaintiff recovers. In any case, the intention of the physicians rendering treatment is clear, and the court does not have to speculate as to the intention.

intention of the third party can be disregarded. Instead, should not the defendant be allowed to "take the plaintiff as he finds him" when it would inure to his benefit, just as he must when it is to his detriment? The result reached in the instant case is more desirable than would be the case under the Ohio rule.